

Picus v. Wal-Mart Stores, Inc. et al

Doc.

1 Dawn J. Grossman
Nevada Bar No. 6328
2 COZEN O'CONNOR
Suite 1610, 501 West Broadway
3 San Diego, CA 92101
Telephone: 619.234.1700
4 Toll Free Phone: 800.782.3366
Facsimile: 619.234.7831

5 Designation For Service Only:
6 Delanoy, Schuetze, McGaha & Provost
601 South Rancho Drive, Suite C-20
7 Las Vegas, NV 89106

8 Attorneys for Defendant
DEL MONTE FOODS COMPANY

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

13 MARGARET PICUS, an individual; on behalf
of herself, and on behalf of others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 WAL-MART STORES, INC.; MENU FOODS
INC; DEL MONTE FOODS COMPANY;
18 SUNSHINE MILLS, INC.; CHEMNUTRA,
INC.; and DOES 1 through 100, inclusive,

19 Defendants.
20

Case No.: 2:07-cv-00689

DEFENDANT DEL MONTE FOODS
COMPANY'S STATEMENT RE:
REMOVAL IN RESPONSE TO THE
COURT'S MAY 29, 2007 MINUTE
ORDER

22 TO THE ROGER L. HUNT, U.S. DISTRICT JUDGE AND TO ALL PARTIES
23 AND THEIR ATTORNEYS OF RECORD:

24 Defendant DEL MONTE FOODS COMPANY submits the following statement
25 regarding removal of the above-entitled action pursuant to the Judge Hunt's May 29, 2007
26 Order.
27
28

1 1. Defendant DEL MONTE FOODS COMPANY was served with Plaintiffs'
2 Summons and Complaint, asserting federal claims for the first time, and which is the subject
3 of Defendant's removal, on May 7, 2007.

4 2. The removal is based on original jurisdiction pursuant to the provisions of the
5 Class Action Fairness Act (CAFA) 28 U.S.C. § 1332(d)(2).

6 3. All of the requirements for removal under CAFA exist in this case. Minimal
7 diversity exists from the face of the complaint because it is alleged on pages 6-7 that Plaintiff
8 is a resident of Nevada and that defendant Wal-Mart Stores, is incorporated in Delaware and
9 maintains its principal place of business in Arkansas. Furthermore, Menu Foods Inc., is
10 incorporated in New Jersey with a its principal place of business in Ontario, Canada; Del
11 Monte Foods is incorporated in Delaware and maintains its principal place of business in San
12 Francisco, California; and Sunshine Mills is incorporated in Delaware with its principal
13 place of business in Alabama.

14 4. The allegations of the Complaint reveal that there are at least 100 members of
15 the plaintiff class because the complaint alleges that the multiple brands of dog food at issue
16 were each sold by Wal-Mart in all 50 states.

17 5. That the combined claims of the plaintiff class exceed \$5,000,000 is also
18 determinable from the face of the complaint. More specifically, paragraph 22 alleges that "it
19 is impracticable to bring all members of the class before the Court. Plaintiff estimates that
20 there are thousands of class members geographically spread throughout Nevada and millions
21 of class members, geographically spread throughout the United States." Grossman Aff.,
22 Exhibit "A". Even assuming that each class member only purchased one container of the
23 allegedly mislabeled pet food, CAFA's amount in controversy would be met.

24 6. These same allegations of paragraph 22 of plaintiff's Complaint also establish
25 that this case does not fall within the "home state" exception to CAFA which requires that
26 more than two thirds of the class members reside in the home state (in this case Nevada) or
27 the "discretionary abstention" provision, which allows the federal court to abstain if at least
28 one third of the class members reside in the state and the primary defendants are citizens of

1 the state in which the action was filed. See 28 U.S.C. 1332(d)(3) and (4). As stated, the
2 plaintiff's Complaint itself states that whereas there are millions of class members across the
3 country, only several thousands of these persons reside in Nevada.

4 7. On all of these bases, the action is removable under CAFA and 28 U.S.C.
5 §1441(a).

6 8. Defendant removed this action to the above entitled Court within 30 days of
7 receiving Plaintiffs' Complaint.

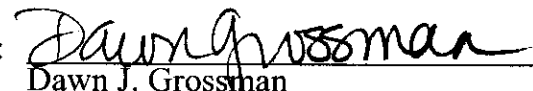
8 9. Del Monte Foods is aware only that Menu Foods was served and is informed
9 and believes Menu Foods was filing its own Notice of Removal in lieu of joining.

10 10. This removing Defendant lacks knowledge of whether the other defendants
11 have been served. A defendant who has been served need not seek out and notify
12 codefendants who have not been served to ask them to join in the removal. [See *Gossmeier*
13 *v. McDonald* (7th Cir. 1997) 128 F3d 481, 489]

14 DATED: May 31, 2007

COZEN O'CONNOR

16 By:



Dawn J. Grossman
Nevada Bar No. 6328
COZEN O'CONNOR
Suite 1610, 501 West Broadway
San Diego, CA 92101
Telephone: 619.234.1700
Toll Free Phone: 800.782.3366
Facsimile: 619.234.7831

21 Designation For Service Only:
22 Delanoy, Schuetze, McGaha & Provost
23 601 South Rancho Drive, Suite C-20
24 Las Vegas, NV 89106
Attorneys for Defendant
DEL MONTE FOODS COMPANY

25 SAN_DIEGO\363676\1 203406.000
26
27
28